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STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave. Suite 3900  
Las Vegas, Nevada 89101

April 16, 2024

Via U.S Mail and Email

Alex Henderson



**Re: Open Meeting Law Complaint, OAG File No. 13897-462  
Skyland General Improvement District Board of Trustees**

Dear Mr. Henderson:

The Office of the Attorney General (“OAG”) is in receipt of your complaint (“Complaint”) alleging violations of the Open Meeting Law (“OML”) by the Skyland General Improvement District Board of Trustees (“Board”) regarding actions by members leading up to and including the Board’s October 3, 2022, meeting.

The OAG has statutory enforcement powers under the OML and the authority to investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040. The OAG’s investigation of the Complaint included a review of the Complaint and attachments, the Response on behalf of the Board, and the agenda and minutes for the Board’s October 3, 2022, meeting and the agenda, minutes and audio recording for the Board’s November 30, 2022, meeting. After investigating the Complaint, the OAG determines that the Board did not violate the OML as alleged in the Complaint.

**FACTUAL BACKGROUND**

In or around May 2022, staff from Douglas County contacted John Herwig, a Board trustee, and Larry Sidney, a former Board trustee, regarding an encroachment permit application filed by Complainant. Herwig and Sidney responded that they were not in favor of the application. In or around

September 2022, Douglas County staff reached out to Herwig again regarding a resubmitted permit application from the Complainant. Herwig responded with his concerns regarding the application and stated “we do not support encroachment of the homeowner’s wall on the right-of-way.”

The Board held a public meeting on October 3, 2022. Complainant’s wife spoke at public comment during the meeting requesting the Board send a letter to Douglas County regarding wall construction on their property. Herwig made comments regarding his actions on the issue and a “default rule” he and Sidney had in place to oppose certain applications. The Board did not take action regarding the matter. The Board stated that the recording of the October 3 meeting was deleted before it could be downloaded.

The Board held a public meeting on November 30, 2022. In between the October 3 and November 30 meetings, Herwig resigned from the Board. Item 1.f. on the November 30 public notice agenda stated:

Discussion and possible action: Regarding the retaining wall at 1073 Skyland Dr: What has been the GID’s involvement with the County? How should the GID respond to construction permit inquiries? What is the best path forward for our community? For possible action, should the board send a letter to the County summarizing its position?

Prior to item 1.f., the Board held a discussion whether to approve the minutes for its October 3 meeting. Public commenters requested that Herwig’s comments be included in the minutes. The Board chose not to approve the minutes at that time and to attempt to include Herwig’s comments despite not having the meeting recording.

When the Board reached item 1.f., there was extensive discussion whether permitting matters should be something the Board takes any position on as it does not have jurisdiction over such applications. Board members stated that they had been unaware of Herwig’s actions when they occurred and had no discussions with him regarding the matter. The Board voted to send a letter to the County stating the Board was not opposing the application.

The Complaint alleges that Herwig’s correspondence with the County regarding his permit application and any default rule existing among Board members violates the OML as it was never discussed at a public meeting.

### LEGAL ANALYSIS

The Skyland General Improvement District Board of Trustees, created pursuant to NRS Chapter 318, is a public body as defined in NRS 241.015(4) and is subject to the OML.

It is the intent of the OML that actions of public bodies be taken openly and that their deliberations be conducted openly. NRS 241.010. “Action” by a public body means a decision or commitment by a majority of members present “during a meeting of [the] public body.” NRS 241.015(1). A single member of a public body does not have the power to act on behalf of the body unless the body has delegated specific authority. *Commission on Ethics of the State of Nevada v. Hansen*, 134 Nev. 304, 308, 419 P.3d 140 (2018).

Here, the action at issue is Herwig’s correspondence with Douglas County opposing a permit application. There is no indication in the County’s correspondence that it was requesting input from the Board and there is no indication in Herwig’s responses that he was responding on behalf of the Board. There is evidence that Herwig and Sidney discussed the matter prior to responding, but Sidney was not a Board member at the time. The evidence indicates that Herwig acted alone in communicating with the County and a quorum of the Board did not discuss, deliberate or act on the matter outside of a meeting. Thus, the OAG does not find a violation of the OML.

### CONCLUSION

Upon review of your Complaint and available evidence, the OAG has determined that no violation of the OML has occurred. The OAG will close its file regarding this matter.

Sincerely,

AARON D. FORD  
Attorney General

By: /s/ Rosalie Bordelove  
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cc: Charles Zumpft, Esq.  
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